THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable
Case no: 1235/22

In the matter between:

DOMINIQUE CAMILLA MANELIS **APPLICANT**

and

CONSTANTINOS CHARLES MANELIS **RESPONDENT**

Neutral citation: *Manelis v Manelis* (Case no 1235/22) [2025] ZASCA 55 (9 May 2025)

Coram: ZONDI AP, KEIGHTLEY and COPPIN JJA and PHATSHOANE and BLOEM AJJA

Heard: 17 February 2025

Delivered: 9 May 2025

Summary: Divorce – accrual system – effect of the declaration of the net value of a party's estate at the commencement of his or her marriage in an antenuptial contract or statement in terms of s 6 of the Matrimonial Property Act 88 of 1984 – difference between antenuptial contract and statement made in terms of s 6 – declaration of commencement value made in an antenuptial contract as opposed to in a statement – prima facie or conclusive proof of the net value of the estate of the spouse concerned at the commencement of his or her marriage – determination of the accrual of the estate of a spouse at the dissolution of the marriage.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Strydom J, sitting as court of first instance):

1 The application for leave to appeal is granted.

2 The appeal is dismissed with costs, such costs to include the costs of:

2.1 the application for leave to appeal; and

2.2 two counsel, where so employed.

3 The applicant shall pay the costs of the application for condonation for the late lodging of the appeal record.

JUDGMENT

Bloem AJA (Zondi AP, Keightley and Coppin JJA and Phatshoane AJA concurring)

[1] This is an application for leave to appeal and, if granted, the determination of the appeal itself, as contemplated in s 17(2)*(d)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act). The parties were married to each other out of community of property, subject to the accrual system. On 15 September 2015, the applicant, as plaintiff, instituted an action in the Gauteng Division of the High Court, Johannesburg (the high court) against the respondent, as defendant, wherein she sought a decree of divorce, together with ancillary relief.

[2] The focus of this application is the patrimonial aspects of that relief. The relief claimed included a prayer for an order directing the respondent to furnish the applicant with a statement of account, supported by documents, as to the value of his estate at the commencement of their marriage, as recorded in their

antenuptial contract. The purpose of this relief was to support a debatement of the statement of account. Allied to this, the applicant sought an order declaring that the respondent was bound by the commencement value of his estate as determined pursuant to that debatement. Finally, the relief included a prayer that the respondent pay to the applicant half of the difference between the accrual of their respective estates.

[3] On 24 March 2022, the high court granted a decree of divorce, an order dealing with the primary residence and maintenance of the parties' minor son and their parental rights and obligations, as well as an order that the respondent pay rehabilitative maintenance to the applicant. The only outstanding issue, namely, whether an accrual was payable by the respondent to the applicant in terms of the provisions of their antenuptial contract, read with the provisions of the Matrimonial Property Act 88 of 1984 (the MPA) was postponed for determination on a later date.

[4] On 29 June 2022, the high court dismissed the applicant's claim for accrual with costs.[1] On 3 November 2022, it dismissed her application for leave to appeal with costs. On 1 February 2023, two judges of this Court, who considered the application for leave to appeal, referred her application for leave to appeal for the hearing of oral argument in terms of s 17(2)*(d)* of the Superior Courts Act and ordered the parties to be prepared, if called upon to do so, to address this Court on the merits of the appeal.

The issues

[5] Three issues must be determined in this appeal. The first issue is which party should be ordered to pay the costs occasioned by the application for condonation for the late lodging of the appeal record. The second issue is whether

[1] That judgment has been reported sub nom *DM v CM* 2022 (6) SA 255 (GJ).

the applicant should be granted leave to appeal. The third issue is, if leave to appeal is granted, whether the applicant has an accrual claim against the respondent's estate.

Condonation

[6] In terms of rule 8(1) of the Rules of this Court, the applicant was required to have lodged six copies of the record of the proceedings in the high court (the record) with the registrar of this Court on or before 2 May 2023. The parties agreed in terms of rule 8(2) to extend the period for the lodging of the record until 6 November 2023. The record and an application for condonation for the late lodging of the record were indeed lodged on that day. The application for condonation was initially opposed by the respondent, although he did not persist with his opposition at the hearing. What remained in dispute was who should pay the costs occasioned by the application for condonation.

[7] The delay of six months is substantial and required a satisfactory explanation. The applicant's attorney sought to blame the respondent and his attorney for the delay in the finalisation of the record, despite having no reason to do so. A reading of the affidavits shows that the respondent's attorney assisted the applicant's attorney with the preparation of the record and that it was the inaction of the applicant's attorney that caused the inordinate delay in the lodging of the record. The applicant sought an indulgence. Because the applicant and her attorney did not prepare the record with the necessary speed, thereby causing the delay, it is appropriate to order the applicant to pay the costs of the application for condonation for the late lodging of the record.

Leave to appeal

[8] In terms of s 17(1)*(a)* of the Superior Courts Act, leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal

would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. There are indeed conflicting judgments on the central issue to be determined in this appeal. There is accordingly a need for uniformity on the interpretation of s 6(3) of the MPA. Leave to appeal should, for that reason, be granted to the applicant.

The central issue in the appeal

[9] The central issue in this appeal is whether there has been an accrual in the respondent's estate between the commencement of his marriage and the dissolution thereof. What needs to be determined first is whether, on a proper interpretation of s 6(3) of the MPA, the parties are bound by the value of the respondent's estate at the commencement of his marriage, as declared by him in the antenuptial contract that the parties concluded on 29 April 2009. The applicant contends that they are not so bound, whereas the respondent contends that the commencement value is binding, and that it was not open to the applicant to challenge its accuracy in the divorce proceedings. The second question to be determined is whether the applicant discharged the onus of proving an accrual.

[10] In their antenuptial contract the applicant declared the net value of her estate at the commencement of the marriage as nil and the respondent declared his as R68.7 million. In the divorce proceedings, the applicant disputed the accuracy of the amount of R68.7 million on the basis that it was overstated.

[11] The applicant alleged that, based on an accurate calculation of the commencement value of the respondent's estate, the value of his estate at the dissolution of the marriage exceeded the commencement value by approximately R36 million. She accordingly claimed that she was entitled to half of that amount, being approximately R18 million. The case presented by the respondent, on the

other hand, was that the value of his estate was calculated at approximately R11.5 million at 4 October 2021. Thus, based on the declared commencement value, his estate had substantially decreased during the marriage and there was accordingly no accrual.

[12] The high court found that the parties were bound by the commencement value of the respondent's estate, as declared by him in the antenuptial contract. It also found that there was no accrual because the net value of the respondent's estate at the dissolution of his marriage did not exceed the net value of his estate at the commencement of his marriage.

Legislative framework

[13] Chapter 1 of the MPA provides for the accrual system. In terms of s 4(1)*(a)*, '[t]he accrual of the estate of a spouse is the amount by which the net value of his estate at the dissolution of his marriage exceeds the net value of his estate at the commencement of that marriage'. In terms of s 3(1), at the dissolution of the marriage subject to the accrual system, by divorce or death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, acquires a claim against the other spouse for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

[14] Section 6 of the MPA is crucial to the consideration of the appeal. It reads as follows:

'6 Proof of commencement value of estate

(1) Where a party to an intended marriage does not for the purpose of proof of the net value of his estate at the commencement of his marriage declare that value in the antenuptial contract concerned, he may for such purpose declare that value before the marriage is entered into or within six months thereafter in a statement, which shall be signed by the other party, and cause the statement to be attested by a notary and filed with the copy of the antenuptial contract of

the parties in the protocol of the notary before whom the antenuptial contract was executed.

(2) A notary attesting such a statement shall furnish the parties with a certified copy thereof on which he shall certify that the original is kept in his protocol together with the copy of the antenuptial contract of the parties or, if he is not the notary before whom the antenuptial contract was executed, he shall send the original statement by registered post to the notary in whose protocol the antenuptial contract is kept, or to the custodian of his protocol, as the case may be, and the last-mentioned notary or that custodian shall keep the original statement together with the copy of the antenuptial contract of the parties in his protocol.

(3) An antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as *prima facie* proof of the net value of the estate of the spouse concerned at the commencement of his marriage.

(4) The net value of the estate of a spouse at the commencement of his marriage is deemed to be nil if-

(a) the liabilities of that spouse exceed his assets at such commencement;

(b) that value was not declared in his antenuptial contract or in a statement in terms of subsection (1) and the contrary is not proved.'

Conflicting judgments

[15] The applicant relies on s 6(3) for the contention that the antenuptial contract that she concluded with the respondent serves only as prima facie proof of the commencement value of the respondent's estate and that she was entitled accordingly to adduce evidence to rebut the value that he declared. There are conflicting judgments of the high court on the interpretation of s 6(3). The one line of cases is to the effect that the parties who concluded an antenuptial contract wherein one or both declared the commencement value of one or both parties' estates are bound by such declaration. The other line of cases is to the effect that such an antenuptial contract serves merely as prima facie proof of the value of the parties' respective estates at the commencement of the marriage.

[16] In *Olivier v Olivier*[2] *(Olivier)* the husband relied solely on s 6(3) in support of his contention that he was entitled to adduce evidence to prove that the commencement value of his estate was higher than the value declared by him in the antenuptial contract that he and his wife concluded before their marriage. The court held that the husband was bound by the provisions of the antenuptial contract and that, absent a claim for rectification, it was not open to him to adduce evidence that the commencement value of his estate was other than that declared in the antenuptial contract. In *Jones and Another v Beatty NO and Others*,[3]*(Jones)* which was decided on exception, it was held that s 6(3) has no application where parties declared the commencement value of their estate in the antenuptial contract.

[17] A completely different conclusion was arrived at in *Thomas v Thomas*[4] (*Thomas*). The court found that s 6(3) must be interpreted to mean that where a party to an intended marriage declares the commencement value of his estate in an antenuptial contract, such antenuptial contract serves only as prima facie proof of the commencement value of the estate of the spouse concerned.

[18] *Thomas* was not followed in *M v M*[5]in which the court was required to determine whether the husband could rely on s 6(3) to prove that the commencement value of his estate was not nil, as declared in the antenuptial contract, but approximately R2.7 million. The court dismissed the husband's claim and declared that the commencement value of his estate was nil, and not R2.7 million, as he contended. The full court[6] upheld the decision in *M v M*.

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[2] *Olivier v Olivier* 1998 (1) SA 550 (D & CLD) (*Olivier*).
[3] *Jones and Another v Beatty NO and Others* 1998 (3) SA 1097 (TPD) at 1100G-I.
[4] *Thomas v Thomas* [1999] 3 All SA 192 (NC) (*Thomas*).
[5] *M v M* (62488/15) [2016] ZAGPPHC 1220 (1 December 2016) (*M v M*).
[6] *NHM v HMM* (A193/22017; 62488/2015) [2019] ZAGPPHC 1108 (13 September 2019) (*NHM v HMM*).

[19] In *TN v NN and Others*[7] the court was called upon to determine the value of the husband's estate at the commencement of his marriage to his wife. The commencement value of the husband's estate was declared as R3 million in their antenuptial contract. In the divorce action, the wife, relying on s 6(3), pleaded that the commencement value of her husband's estate was no more than R750 000. The court dismissed the wife's claim, not because it was convinced that the parties were bound by the declared value in the estate but, because she failed to rebut 'the prima facie probative effect of the declaration' of the commencement value of her husband's estate.[8]

[20] To summarise, *Olivier*, *Jones*, *M v M* and *NHM v HMM* held that where a party declares the commencement value of his estate in an antenuptial contract, the parties to the intended marriage are bound by such declared value. On the other hand, *Thomas* and *TN v NN* held that the Legislature did not intend the declared value in an antenuptial contract to have binding contractual effect but that such an antenuptial contract serves only as prima facie proof of the commencement value of the estate of the spouse concerned. In *TN v NN* the court went to the extent of stating that the clear intention of the Legislature is that, whatever might have been declared or not declared by a party in an antenuptial contract, should always be left open to any interested party to prove the actual commencement value of the estate of the spouse concerned.[9]

Interpretation of s 6(3)

[21] South Africa has a matrimonial property system in which agreement and choice are central.[10] If the parties decide to marry, they have a choice of getting married in or out of community of property. Community of property comes into

[7] *TN v NN and Others* 2018 (4) SA 316 (WCC) (*TN v NN*).
[8] *Ibid* para 24 fn 7.
[9] *Ibid* para 18 fn 7.
[10] *EB v ER NO and Others and a similar matter* 2024 (2) SA 1 (CC) para 108.

being as soon as a marriage is solemnised, unless the spouses have concluded an agreement prior to the marriage, which agreement excludes community of property.[11] For parties to marry out of community of property, there must be an agreement which is binding on them. Such an agreement finds expression in the conclusion of an antenuptial contract, which is a contract in terms whereof the parties to the intended marriage regulate the matrimonial property regime that will apply to their marriage and other related matters.[12]

[22] The MPA was introduced in 1984 to amend the matrimonial property law. It introduced the accrual system to marriages out of community of property. The effect thereof is that '[e]very marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded … is subject to the accrual system … except in so far as that system is expressly excluded by the antenuptial contract'.[13] The determination of an accrual depends on proof of the value of a spouse's estate at the commencement of the marriage and the value of such a spouse's estate at the dissolution of the marriage. There is no accrual if the value of a spouse's estate at the dissolution of the marriage is equal to or less than the value at the commencement of the marriage.

[23] Section 6 of the MPA deals with proof of the commencement value of the estate of a party to an intended marriage. Without proof of the commencement value, it would be impossible, at the dissolution of the marriage, to determine the accrual of a party's estate. Section 6(3) refers to an antenuptial contract contemplated in s 6(1) or a certified copy of such an antenuptial contract; or a statement signed and attested in terms of s 6(1) or a certified copy of such a statement contemplated in s 6(2). In terms of s 6(3), such an antenuptial contract

[11] *Ex parte Andersson and Another* 1964 (2) SA 75 (C) at 77B-78C.
[12] F du Bois et al *Wille's Principles of South African Law* 9th ed (2007) at 281.
[13] Section 2 of the Matrimonial Property Act 88 of 1984.

or a statement serves as prima facie proof of the value of the estate of the spouse concerned at the commencement of his marriage. The crucial question to be considered in this appeal is whether 'the antenuptial contract contemplated in section 6(1)' means any antenuptial contract, including one in which a declaration of commencement value is made, or whether it means only one in which no commencement value is declared.

[24] The court in *Olivier* was inclined to the view that the words 'contemplated in subsection (1)' were erroneously inserted in s 6(3). That inclination stems from the submission that, if the antenuptial contract referred to in s 6(3) was to be restricted to only an antenuptial contract in which the commencement value of a party's estate was not declared, such an interpretation would lead to an absurdity. It was submitted that the absurdity lies therein that, if a party does not declare the commencement value of his estate in the antenuptial contract, the non-declaration of a value serves as prima facie proof of such value, in terms of s 6(3). It means that saying nothing about the value of a party's estate constitutes prima facie proof of the commencement value of such a party's estate. The court said that 'saying nothing cannot in logic constitute *prima facie* proof of net asset value'.[14]

[25] The absurdity submission has no substance if regard is had to s 6(4)*(b)* of the MPA. It provides that the commencement value of a party's estate is deemed to be nil if the commencement value of such a party's estate is not declared in his antenuptial contact and the contrary is not proved. The absurdity disappears when ss 6(3) and (1) are read with s 6(4)*(b)* because the latter provision establishes a deemed prima facie value of nil. No reference is made to s 6(4)*(b)* in *Olivier*.

[26] The absurdity submission was considered and sustained in *Thomas* despite

[14] *Olivier* at 554E-F fn 2.

a consideration of s 6(4)*(b)*.[15] The court there found that the Legislature would not have intended s 6(3) to mean that it is only in circumstances where a commencement value has not been declared in an antenuptial contract, that it serves as prima facie proof of such value; and, at the same time, intended s 6(4)*(b)* to mean exactly the same thing. That finding is not supported by a proper interpretation of ss 6(1), 6(3) and 6(4)*(b)*.

[27] The purpose of s 6(1) is solely to provide an option to a party who has not declared the commencement value of his or her estate in an antenuptial contract. Such a party may declare that value in a statement. Section 6(1) does not deal with whether the antenuptial contract in which the commencement value of a party's estate has not been declared, or a statement serves as conclusive or prima facie proof of such value. That is what s 6(3) does. What s 6(4)*(b)* does is to introduce a deeming provision. It places a deemed commencement value of nil on the estate of the spouse concerned. The deeming provision is activated only when two conditions are satisfied. The first condition is that the commencement value of the party's estate must not be declared in the antenuptial contract. That is how far ss 6(3) and (1) go. The second condition goes further than that. It provides that the commencement value cannot be deemed to be nil when the evidence shows that such value was higher than the deemed value of nil. Section 6(4)*(b)* clearly contemplates the possibility of it being proved that the commencement value of a spouse's estate might be an amount higher than nil. It assists with the proof of the commencement value of a spouse's estate, whereas s 6(3) simply states the nature and extent of proof of an antenuptial contract in which the commencement value of a party's estate has not been declared.

[28] A clear distinction is drawn in s 6 between an antenuptial contract and a statement. If the statement was intended to be a contract, one would have

[15] *Thomas* at 197I-J fn 4.

expected the Legislature to have referred to the statement, if made before conclusion of the marriage, as 'the amended antenuptial contract' or 'an addendum to the antenuptial contract' if the statement was made within six months after the commencement of the marriage.

[29] A distinction is also drawn in s 6 between two types of antenuptial contracts to which the accrual system applies. The one type is where a party to an intended marriage declares the commencement value of his or her estate in the antenuptial contract. In such a case, the antenuptial contract, being subject to common law contractual principles, serves as conclusive proof of such commencement value. In other words, the parties to the intended marriage are bound by the terms of the antenuptial contract, inclusive of the declaration of the commencement value of a party's estate. The terms of such an antenuptial agreement can only be attacked on the recognised common law grounds.

[30] The other type of antenuptial contract is where a party to an intended marriage does not declare the commencement value of his or her estate. In such a case, the deemed commencement value of such a party's estate is nil, in terms of s 6(4)*(b)*, subject to the two conditions referred to above. Evidence may be adduced to prove that the spouse's estate has a commencement value other than the deemed value of nil. That is what s 6(4)*(b)* provides. Where a party makes a statement, the commencement value of his or her estate declared in such a statement, serves as prima facie proof of such value. That is what s 6(3) provides. Evidence may be adduced in such a case by any interested party to prove that the spouse's estate has a commencement value other than the amount of the value declared in the statement. For purposes of an accrual calculation, the Legislature does not draw a distinction between whether such calculation occurs at the instance of the spouses themselves or third parties, like their heirs or creditors.[16]

[16] *Thomas* at 198H and 199G-H fn 4.

The finding in *Olivier*, that the provisions of s 6(3) were intended to be applicable only as against third parties at the dissolution of the marriage, is incorrect.

[31] In the circumstances, contrary to what was found in *Thomas* and *TN v NN*, an antenuptial contract contemplated in s 6(1) is one in which a party did not declare the commencement value of his or her estate. It is only in that case that there is a deemed value, in terms of s 6(4)*(b)*, with the door left open to a party to prove a different value. This is why, under s 6(3), the deemed or subsequently stated value is expressed to serve only as prima facie proof of the commencement value of the estate of the spouse concerned.

[32] In *Olivier* the court recognised the role of the common law in the interpretation of legislation in two respects. First, it found that, when the husband and wife concluded the antenuptial contract, they agreed and contracted with each other that the value of their respective estates was nil. The court found that the antenuptial contract was conclusive proof of the terms of their agreement and, in terms of the common law, it could only be attacked on the recognised grounds of misrepresentation, duress, undue influence, etc. Fraud should be added to the list. If such a contract does not correctly reflect the agreement between the parties due to common error, then rectification can also be sought.[17]

[33] Where parties conclude an agreement, they should be bound by the terms thereof. Despite the conclusion of an antenuptial contract which complied with common law principles of contract, it was nevertheless found in *Thomas* that the commencement value declared therein did not serve as conclusive proof of such value but served merely as prima facie proof thereof. The conclusion in *Thomas*, that the Legislature changed the common law, is wrong since nothing in s 6(3) indicates such an intention.

[17] *Olivier* at 555D-E fn 2.

[34] In the second respect, *Olivier* referred to the presumption that a statute does not intend to alter or modify the common law. If it is the intention of the Legislature to alter or modify the common law, the statute must state so either explicitly or by necessary inference.[18] The court could not fathom any possible reason why the Legislature would intend to alter the common law by s 6(3), when the very purpose of agreeing to the commencement value of the respective estates in an antenuptial contract is to have certainty when effect is to be given to the accrual system. The husband was accordingly held to be bound by the provisions of the antenuptial contract.[19] Nothing in s 6(3) indicates that the Legislature intended altering the common law.

[35] Regard being had to the distinction between an antenuptial contract and a statement and the two different types of antenuptial contracts, the absurdity argument has no substance and must fail. That argument does not draw a distinction in the first place, between an antenuptial contract and a statement and, in the second place, between an antenuptial contract in which the commencement value of a party's estate is declared and an antenuptial contract in which such value is not declared. Once those distinctions are drawn, s 6(3) must, in the first instance, be interpreted to refer to an antenuptial contract in which the commencement value of a party is not declared. In the second instance, s 6(3) refers to a statement 'signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2)'.

[36] *Thomas* and v *TN v NN* did not draw a distinction between the objective commencement value of a party's estate and an agreement between the parties on

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[18] In this regard Wessels J said in *Casserley v Stubbs* 1916 TPD 310 at 312:
'It is a well-known canon of construction that we cannot infer that a statute intends to alter the common law. The statute must either explicitly say that it is the intention of the legislature to alter the common law, or the inference from the Ordinance must be such that we can come to no other conclusion than that the legislature did have such intention.'

[19] *Olivier* at 555J-556A fn 2.

the commencement value of such a party's estate. Where the objective commencement value of a party's estate is R1 million but the parties to the intended marriage, for whatever reason, agree that the commencement value of such party's estate is R2 million, and the value of R2 million is declared in the antenuptial contract, that antenuptial contract will serve as conclusive proof of the party's commencement value. The parties will be bound by the terms of that antenuptial contract in the absence of an attack on the antenuptial contract based on the recognised common law grounds.

[37] On the other hand, a statement is a unilateral act which does not require agreement of the other party of the commencement value declared in that statement. Therein, according to *M v M*, lies the difference between an antenuptial contract and a statement. Since it does not require the other party's agreement, a statement serves only as prima facie proof of the value declared therein.

[38] Since an antenuptial contract, in which the commencement value of a party's estate has been declared, serves as conclusive proof of the value declared therein, the finding in *TN v NN*, that the net values at the commencement and dissolution of the marriage are matters of objective fact, is incorrect. The Legislature intended the commencement value to be declared in an antenuptial contract for the sake of certainty.

[39] The proposition that the Legislature inserted the words 'contemplated in subsection (1)' in s 6(3) in error, offends the well-known rule in the interpretation of legislation that meaning must be given to every word used. In *Wellworths Bazaars Ltd v Chandler's Ltd and Another*[20] this Court held that '…a Court should be slow to come to the conclusion that the words [in an enactment] are

[20] *Wellworths Bazaars Ltd v Chandler's Ltd and Another* 1947 (2) SA 37 (A) at 43.

tautologous or superfluous'. Recently this Court said in *GN v JN*[21] that one cannot treat words in an enactment '…as if they do not exist. It is impermissible to do so, as it militates against a long-standing precept of interpretation that every word must be given a meaning, and that no word should be ignored, or treated as tautologous or superfluous'. In that regard, this Court referred to, among others, *National Credit Regulator v Opperman and Others* where Cameron J stated that '[a] longstanding precept of interpretation is that every word must be given a meaning. Words in an enactment should not be treated as tautologous or superfluous'.[22]

[40] In the circumstances, the words 'contemplated in subsection (1)' were clearly not erroneously inserted in s 6(3). *Olivier*, *Thomas* and *TN v NN* were accordingly wrong to the extent that they found that those words were erroneously inserted in s 6(3).

[41] An antenuptial contract contemplated in s 6(1) is one where a party to an intended marriage does not, for the purpose of proof of the value of his or her estate at the commencement of his marriage, declare such value. A statement contemplated in s 6(1) is one which a party to an intended marriage makes before the marriage is entered into or within six months after the marriage has been entered into where he or she did not declare the commencement value of his or her estate in the antenuptial contract.

[42] In the circumstances, s 6(3) covers the situation where a party has not declared the commencement value of his or her estate in an antenuptial contract or where he or she has made a statement in terms of s 6(1). Such an antenuptial contract or statement serves as prima facie proof of the commencement value of

[21] *GN v JN* [2016] ZASCA 162; 2017 (1) SA 342 (SCA); [2017] 1 All SA 33 (SCA) para 54.
[22] *National Credit Regulator v Opperman and Others* [2012] ZACC 29; 2013 (2) BCLR 170 (CC); 2013 (2) SA 1 (CC) para 99.

the estate of the party concerned. The provisions of s 6(3) as read with subsec (1) do not cover the situation where a party has declared the commencement value of his or her estate. It follows that, where a party has declared the commencement value of his or her estate in an antenuptial contract, such antenuptial contract serves as conclusive proof of the commencement value of the estate of the party concerned. The finding in *Thomas* and *TN v NN*, that the intention of the Legislature was that both an antenuptial contract and a statement serve as prima facie proof of the commencement value declared therein, is accordingly incorrect.

[43] In this case, the parties declared the commencement value of their respective estates in their antenuptial contract. On the above interpretation of s 6(3) of the MPA, the parties are bound by the terms of their antenuptial contract. The applicant's reliance on s 6(3) was accordingly misplaced. She did not plead any of the recognised common law grounds upon which the terms of the antenuptial contract could be attacked. In the circumstances, the high court correctly determined that the commencement value of the respondent's estate is R68.7 million. The parties agreed in the high court that the commencement value, CPI adjusted, equated to R129 million six days before the dissolution of the marriage on 24 March 2022. Counsel confirmed that agreement before us. This is the figure that must be used to determine whether there was any accrual in the respondent's estate.

[44] For purposes of determining whether there has been an accrual, it must be established whether the value of the respondent's estate at the dissolution of the marriage exceeded the value of his estate at the commencement of that marriage. If one were to accept the calculation of Mr Ryan Sacks (Mr Sacks), one of the applicant's expert witnesses, the value of the respondent's estate at the date of dissolution of the marriage was R117 199 381. The value of the respondent's estate was, on Mr Sacks's calculation, accordingly lower than the commencement

value of R129 million. On the applicant's version, therefore, there was no accrual, as an accrual cannot be a negative amount. The applicant accordingly did not discharge the onus of proving an accrual and her appeal must therefore fail.

[45] There is no reason why costs should not follow the result. Both parties employed two counsel, a reasonable precaution, regard being had to the factual and legal issues raised in this appeal. The applicant must pay the costs of the appeal, inclusive of the costs of two counsel, where so employed.

[46] In the result, it is ordered that:

1 The application for leave to appeal is granted.

2 The appeal is dismissed with costs, such costs to include the costs of:

2.1 the application for leave to appeal; and

2.2 two counsel, where so employed.

3 The applicant shall pay the costs of the application for condonation for the late lodging of the appeal record.

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G H BLOEM
ACTING JUDGE OF APPEAL

Appearances

For the applicant:	LM Hodes SC with A Salduker
Instructed by:	RHK Attorneys, Sandton
	Symington de Kok Inc, Bloemfontein
For the respondent:	AP Joubert SC with L Franck
Instructed by:	England Slabbert Attorneys, Rivonia
	Lovius Block Attorneys, Bloemfontein.